

Remarks

Claim 54 is indicated by the Examiner as allowed, and that is gratefully acknowledged.

Claim rejections 35 USC § 101

Claims 34-47 have been amended to claim *"a computer-readable medium encoded with a data structure or computer program to perform a method..."*, as requested by the Examiner.

Claim rejections 35 USC § 103

Applicant has carefully considered Examiner's comments as set out in the Office Action dated June 1, 2009. Nonetheless, Applicant submits the following arguments in support of the claims currently on file.

As a preliminary comment, Applicant accepts that the assertion made in the last response, namely that the office action in question was unchanged from its predecessor, was incorrect. The newly-cited passage in Beyda was indeed overlooked and Applicant regrets this error.

The Examiner alleges that independent claim 1 would have been obvious, based on a combination of Beyda et al. (US 6,590,869), in further view of Weaver (US 7,151,927). Without prejudice to any possible outcome which may result by combining the disclosures of Beyda and Weaver, the Applicant respectfully submits that a skilled person would not be motivated to combine the above references, as the disclosures of Beyda and Weaver are incompatible with one another, being in two separate and distinct technical fields.

Beyda is concerned with monitoring delay calculations and end-to-end echo calculations in packet-based networks relying on the Internet protocol, i.e. IP telephony.

In sharp contrast, the system of Weaver operates in an entirely different type of network, namely a cellular network employing radio communications, and relates to diagnostic systems for such a network.

It is respectfully submitted that the respective fields of Beyda and Weaver are separate and distinct, and that the sphere of knowledge of a skilled person in the field of Beyda has no overlap with the field of Weaver, nor will the skilled person of Beyda have any reason or motivation to look to the field of Weaver.

In the Examiner's response to the arguments of the Applicant contained in the Office Action of June 1, 2009, regarding the incompatibility of Beyda and Weaver, the Examiner has responded to the distinction presented by the Applicant by referring to a passage in Weaver which discloses communication utilizing the TCP/IP protocol or the Internet (col. 5, lines 53-57). The Applicant respectfully submits that the Examiner is mistaken.

The cited passage of Weaver refers to the use of the TCP/IP protocol to facilitate the remote access to the testing unit, i.e. Weaver teaches that the user or manager of the testing station can access the testing station over the Internet, from any other location having an IP connection. However, the diagnostic tests in Weaver are still carried out on a radio-based cellular network. In no way does Weaver approach the field of the present invention, wherein the tests and analysis are carried out on a packet-based network. Any testing or diagnostic steps are carried out in the context of a radio-based cellular network, and it is only the results of such tests which may be accessed using a TCP/IP connection.

The clear distinction between the field of Beyda and the field of Weaver is further illustrated when considering the primary US Classification for each document.

Beyda is classified in US Cl. 370/248, namely:

*370/248 - MULTIPLEX COMMUNICATIONS - DIAGNOSTIC TESTING
(OTHER THAN SYNCHRONIZATION) - Path check*

In the official class definitions obtained from the USPTO website, this field is described as “*Subject matter wherein a link through a multiplex system or a connection established through a multiplex switching network is monitored for circuit continuity.*”

In contrast, Weaver is classified in US Cl. 455/423, being:

*455/423 - TELECOMMUNICATIONS - RADIOTELEPHONE SYSTEM -
Diagnostic testing, malfunction indication, or electrical condition
measurement*

The field in question is further described as “*Subject matter for evaluating or monitoring the condition of a zoned or cellular radiotelephone system in order to determine the presence of a faulty or nonstandard condition.*” (Emphasis added.)

It is clear that the skilled person in the field of Beyda is concerned with the issues surrounding packet-based switching networks, e.g. buffering and queuing of packets, node reliability, efficient route mapping, etc. However, the field of a skilled person when considering Weaver is related to radio-based cellular networks, and is concerned with the particular issues specific to that technical field, e.g. signal strength, movement relative to transceivers, frequency usage, etc. The Applicant submits that the skilled person of Beyda (being a packet-based network engineer) has no motivation to look to the disclosure of Weaver (relating to radio-based telecommunications) if looking to modify the system of Beyda.

It is respectfully submitted that the reference in Weaver to TCP/IP communication has led the Examiner to consider that Weaver may be applied as a relevant disclosure in the field of packet-based communications. However, such a reference in col. 5 of Weaver was made with regard to an implementation feature of the system of Weaver, while the actual diagnostic system of Weaver operates purely in the domain of a radio-based cellular network.

It is therefore submitted that Beyda and Weaver are incompatible references, and accordingly the Applicant respectfully submits that independent claim 1 is novel and non-obvious over and above the cited prior art.

Claims 2-33 depend ultimately from claim 1, and are not obvious for at least the same reasons as discussed above.

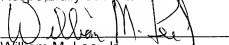
The subject matter of claims 34-47 and 50-53 correspond to the subject matter of the method as claimed in claim 1, and the arguments presented above as to claim 1 equally apply to these claims.

In view of the amendments and arguments made herein, the Applicant respectfully requests the examiner withdraw the rejections, and allow the application.

As this response is being filed during the fifth month following the Examiner's Office Action, an appropriate Petition for Extension of Time is also submitted herewith.

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Respectfully submitted,


A handwritten signature in black ink, appearing to read "William M. Lee, Jr.", is written over a horizontal line.

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